



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

225

CWP-30181-2019**Date of Decision : 05.12.2024**

S.N. Sharma and others

.....Petitioners

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Ivneet Singh Pabla, Advocate for the petitioners.

Mr. Saurabh Mohunta, D.A.G., Haryana.

NAMIT KUMAR, J. (ORAL)

1. The petitioners have invoked the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seeking a writ of certiorari, quashing the orders dated 28.08.2019 (Annexure P-7 colly), whereby the pension of the petitioners has been re-fixed and recovery has been partially effected from them after their retirement without issuing any prior notice and quashing of letters dated 08.05.2019/22.05.2019 (Annexure P-5 colly), whereby re-fixation was ordered to be implemented. Further, seeking a writ of mandamus, directing the respondents not to implement the re-fixation of pension as well as recovery from the petitioners.

2. Brief facts of the case, as have been pleaded in the petition, are that the petitioners joined the respondent-department as Sectional Officers and after rendering satisfactory services retired from the service



on attaining the age of superannuation. The service particulars of the petitioners are as under :-

Sr. No.	Name	Date of Joining	Date of Retirement	Retired from the Post
1.	S.N. Sharma	16.11.1970	29.02.2008	Jr. Engineer
2.	R.K. Goel	23.02.1971	31.08.2005	S.D.O.
3.	Sunder Pal Singh	20.07.1970	30.11.2004	S.D.O.
4.	Piare Lal	22.04.1971	31.12.2001	Jr. Engineer
5.	Ram Dhan Sharma	17.04.1972	30.11.2008	Jr. Engineer

Since their retirement, the petitioners are getting the pension as per the basic pay and pay revised from time to time. However, the respondent-department without informing/issuing notices to the petitioners, issued a letter dated 30.11.2018, whereby recommending re-fixation of the pay of the petitioners. Thereafter, the petitioners along with other similarly situated retirees approached the office of respondent No.4 on 19.03.2019 and enquired about the letter dated 30.11.2018 and they came to know that pursuant to the complaint filed by one R.K. Sharma, Sub-Divisional Engineer (Retired), some benefits inadvertently and wrongly granted to the petitioners during their services and hence on the basis of the said complaint, the benefits granted to the petitioners were withdrawn after approximately 10 years of their retirement, vide letter dated 30.11.2018. Apprehending re-fixation of their pension, the petitioners, approached this Court by filing *CWP No.8353 of 2019 titled as ‘S.N. Sharma and others Vs. State of Haryana and others’* which was withdrawn by the petitioners vide order dated 28.03.2019 with liberty to approach the competent authority of the respondents at the first instance

**CWP-30181-2019****3**

in respect of the grievance raised in the said writ petition that the pay of the petitioners has been reduced without giving any cogent reason or giving any opportunity to them to represent their case before the appropriate authority. In compliance to order dated 28.03.2019 passed by this Court, the petitioners moved a representation dated 02.04.2019 to respondent No.2 for redressal of their grievances. However, the respondents without deciding the said representation, bent upon to implement the order of re-fixation of pay of the petitioners as the order pertaining to re-fixation of pay was communicated to office of respondent No.5. Thereafter, the petitioners again approached this Court by filing *CWP No.13177 of 2019 titled as 'S.N. Sharma and others Vs. State of Haryana and others'* which was disposed of by this Court vide order dated 17.05.2019, with a direction to the respondents to pass an appropriate speaking order on the claim raised by the petitioners in the representation dated 02.04.2019, within a period of three months from the date of receipt of certified copy of the order. However, the respondents without passing a speaking order on the said representation, re-fixed the pension of the petitioners, vide letter dated 22.05.2019, and also ordered to recover the excess amount. Against the said action of the respondents, the petitioners again approached this Court by filing CWP No.15497 of 2019 titled as *'S.N. Sharma and others Vs. State of Haryana and others'*. However, during the pendency of the said writ petition, the respondents have passed the speaking orders dated 28.08.2019 on the representation of the petitioner and rejected their claim. Faced with that situation, CWP No.15497 of 2019 was

**CWP-30181-2019****4**

withdrawn by the petitioners vide order dated 27.09.2019, with liberty to file a fresh one on the same cause of action by challenging the order dated 28.08.2019 passed by the respondents. Hence, this petition.

3. While issuing notice of motion in the instant petition vide order dated 28.11.2019, further recovery from the petitioners was stayed.

4. Learned counsel for the petitioners submits that the petitioners have retired from service on attaining the age of superannuation and after their retirement, letters dated 08.05.2019/22.05.2019 have been issued and orders dated 28.08.2019 have been passed by the respondents, whereby pension of the petitioners has been re-fixed and recovery has been ordered to be effected from them without issuance of any show cause notice or granting any personal hearing in a unilateral manner, which is not only in violation of the principles of natural justice but also against the law laid down in judgment of the Hon'ble Supreme Court passed in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***. He further submits that before staying further recovery from the petitioners vide order dated 28.11.2019 passed by this Court, the department had already recovered some amount from the petitioners.

5. During the course of hearing, learned counsel for the petitioners restricts his claim qua refund of amount already recovered from the petitioners and not challenging the pay fixation.

6. On the other hand, learned counsel for respondents, while referring to the averments made in the reply, has tried to justify the



CWP-30181-2019

5

passing of impugned orders by stating that recovery orders were passed against the petitioners due to their wrong pay fixation and they were paid excess amount and the same was liable to be recovered. However, he conceded the fact that neither any personal hearing was given nor any show cause notice was issued to the petitioners before passing the order of re-fixation of pay and effecting recovery from the petitioners.

7. I have heard learned counsel for the parties and perused the relevant documents.

8. Admittedly, the petitioners have retired from service on attaining the age of superannuation between the years 2001 to 2008 and after a lapse of more than 10 years of their retirement, the respondent-department ordered recovery from them on account of excess payment made to them. Even if an excess amount on the basis of wrong fixation of pay was paid to the petitioners, the same cannot be recovered from them after their retirement. The action of the respondents is totally contrary to the law laid down by the Hon'ble Supreme Court in ***State of Punjab Vs. Rafiq Masih (White Washer) and others : 2015(1) S.C.T. 195***. The relevant portion of the aforesaid judgment is reproduced as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:



(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

9. The facts and circumstances of the present case suggests that it is not the case of the respondents that it was due to some fraud or misrepresentation of the petitioners that they were granted excess payment but it was granted by the respondents-Corporation on their own.

10. Moreover, the recovery has been effected by the respondents in violation of the principles of natural justice as neither any show cause notice was issued to the petitioners nor they were granted an opportunity of personal hearing.

11. In view of the above, this Court is of the considered view that the case of the present petitioners is squarely covered by the



CWP-30181-2019

7

parameters laid down in Clauses (ii) and (iii) of para 12 of the judgment of Hon’ble Supreme Court passed in ***Rafiq Masih (White Washer) and others case (Supra)***. Consequently, the impugned orders qua effecting recovery from the petitioners are set aside and quashed and the respondents are directed to refund the amount, if any recovered from the petitioners, within a period of 03 months from the date of receipt of certified copy of this order.

12. Disposed of in the above terms.

05.12.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No